



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2009 Biennium

<b>Bill #</b>	SB0026	<b>Title:</b>	Severed mineral rights registry law
<b>Primary Sponsor:</b>	Weinberg, D.	<b>Status:</b>	As Introduced

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Include in HB 2    | <input checked="" type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<b>Expenditures:</b>				
General Fund	\$201,527	\$47,618	\$84,560	\$122,376
State Special Revenue	\$462,000	\$924,000	\$924,000	\$924,000
<b>Revenue:</b>				
State Special Revenue	\$462,000	\$924,000	\$924,000	\$924,000
<b>Net Impact-General Fund Balance</b>	(\$201,527)	(\$47,618)	(\$84,560)	(\$122,376)

**Description of fiscal Impact:** SB 26 establishes a new program within the Department of Natural Resources and Conservation (DNRC). Implementing and staffing a mineral registry program for privately-owned mineral interests is estimated to require 23.00 FTE and approximately \$1 million per year when fully implemented. A fee of \$10 per mineral interest filed would provide more than \$900,000 per year, based on the estimate of mineral interests filed per year detailed below. A potential shortfall may arise between filing fee revenue generated and program expenses incurred. The estimated shortfall varies from more than \$200,000 in FY 2008 to less than \$50,000 in FY 2009. However, a number of assumptions were required to generate the filing fee revenue estimate. Actual revenue generated may vary significantly from the estimate. This shortfall is assumed to be made up by the general fund.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Natural Resources and Conservation (DNRC)**

1. SB 26 would authorize an owner of the surface estate to maintain an action to transfer ownership of dormant mineral interests to the surface estate owner. A mineral interest is considered dormant if it has

been unused for a period of 20 years or more and has not been preserved by the mineral interest owner by the recording of a notice of mineral interest or a notice of intent to preserve a mineral interest. SB 26 allows the mineral interest owner to file a late notice of intent to preserve if a court action to terminate the mineral interest is initiated, subject to payment of the surface owner's legal costs. SB 26 also establishes a civil penalty of \$100 per mineral interest for failure to record a notice of mineral interest or notice of intent to preserve the mineral interest. All such notices, along with a fee of \$10 per notice, are to be filed with the DNRC.

2. SB 26 also requires any transfer of real property to include a mineral interest disclosure acknowledging whether or not any mineral interests will transfer with the property. If a transfer does occur, a mineral interest update form must be completed and filed with the DNRC. The amount of this fee is to be prescribed by the DNRC. This fiscal analysis presumes such fee will also be \$10 per mineral interest update filed.
3. SB 26 directs the DNRC to establish and maintain a mineral interest registry to record all notices and updates filed. The registry must be available to the public via the internet. The DNRC will also publish statewide notices at least once a year for three years informing the public of the provisions of SB 26.
4. SB 26 establishes a mineral interest revenue account in the state special revenue fund for all collected fees. Fees deposited into the mineral interest revenue account shall be used to help pay the expenses incurred by the DNRC. This fiscal note assumes shortfalls in the amount available from the mineral interest revenue account will be made up by general fund.
5. DNRC will establish and maintain a mineral interest registry with website access, and will be responsible solely for the receipt and processing notices filed with the DNRC into the registry. The DNRC will not conduct mineral title examinations nor will the State of Montana be responsible for the accuracy or completeness of any ownership information contained within the notices filed with the DNRC. The DNRC will not be responsible for determining if a mineral interest is "dormant" pursuant to SB 26. The DNRC also would not take actions to enforce the civil penalty established in Section 7. (See technical note #6.)

### **Estimated Revenue**

6. Existing, newly created, or transferred split-mineral estate ownership interests would file notices with the DNRC, as mineral interests owned by the surface owner would not be subject to an action to terminate under SB 26.
7. The State of Montana encompasses more than 93 million acres. The ownership database maintained by the state cadastral mapping project identifies approximately 617,000 parcels of privately owned surface estate covering about 53.8 million acres, with the remainder owned by local, state, tribal and federal agencies. Mineral interests owned by federal, tribal, state and local government agencies are exempt from SB 26, as specified in Section 4. The federal government owns approximately 11.7 million acres of mineral estate overlain by private surface ownership. The state's ownership of school trust lands includes approximately 1.25 million acres of mineral ownership overlain by non-state surface ownership, the majority of which is privately-owned. This leaves approximately 40.85 million private surface acres ( $53.8 - 11.7 - 1.25 = 40.85$  million acres) which would be subject to the provisions of SB 26 if the mineral estate were not owned by the surface estate owner. The average size of parcels in private ownership is 87 acres ( $53.8 \text{ million acres} / 617,000 \text{ parcels}$ ). Using this same ratio, 40.85 million private surface acres would be expected to be broken up into approximately 468,000 surface parcels. ( $40.85 / 53.8 \times 617,000 \text{ parcels}$ )
8. This analysis assumes 50% of the 468,000 eligible privately-owned surface parcels are underlain by private split mineral estate (i.e. the private mineral property owner is someone other than the private surface owner). Therefore, an estimated 234,000 parcels ( $468,000 \times 50\%$ ) would be subject to filing of mineral notices with the DNRC. No estimate has been attempted regarding how many of these parcels would not qualify as "dormant" due to mineral activity within the last 20 years.

9. Assuming mineral parcels average the same size as surface parcels and one mineral interest filed per mineral parcel results in an estimated 234,000 mineral interests eligible for filing with the state. The DNRC considers this a conservative estimate as some mineral estate ownership is split among multiple owners, each of which holds a partial interest in the property. This analysis assumes the DNRC would receive notices from approximately one-quarter of eligible parcels per year, with initial start-up of the registry program in FY 2008 allowing only one-half year of notice submittals. (12.5% in FY 2008, 25% in FY 2009 through FY 2011). Estimated notices of registration received total 29,250 in FY 2008 and 58,500 per year in FY 2009 through FY 2011. (Above percentages X 234,000 parcels).
10. Late notices of intent to preserve mineral interest would be minimal.
11. The Department of Revenue reports 94,643 parcels of property changed hands in 2005. Assume this rate of property transfers holds constant for FY 2008 through FY 2011. All realty transfer certificates must include a mineral interest disclosure. Assume half of property transfers include and half exclude mineral estate. Assume half of property transfers excluding mineral estate create changes in mineral ownership interests subject to the ownership update provision of SB 26. (See technical note #5 regarding potential drafting correction) Assuming the DNRC would be able to process updates for one-half year in FY 2008, the amount of ownership updates processed would therefore total approximately 11,830 in FY 2008 and 23,660 per year in FY 2009 through FY 2011. (94,643 X 50% X 50%)
12. The state school trust currently manages 4,160 mineral leases from its ownership of 6.285 million mineral acres. Assuming this same ratio for mineral leases on privately owned minerals produces an estimate of approximately 27,100 mineral leases. (40.85 / 6.285 X 4,160) Assume 25% of these mineral interests file notices each year, with the DNRC processing for one-half year in FY 2008. Estimated notices submitted therefore total approximately 3,400 in FY 2008 and 6,800 in FY 2009 through FY 2011. (Response rate percentages in assumption 9. X 27,100)
13. State school trust mineral leases currently average one lease assignment per every four leases per year. Assuming this same ratio for mineral leases on privately owned minerals produces an estimated 6,800 assignments of mineral interest per year. (27,100 / 4) Assuming a 50% response rate for filing with the DNRC yields approximately 3,400 notices filed per year, with a half-year handled in FY 2008. The number of notices processed per year therefore total 1,700 in FY 2008 and 3,400 in FY 2009 through FY 2011.
14. The DNRC would therefore process notices of registration, late notices of intent to preserve mineral interests covering ownership and lease interests totaling 46,200 in FY 2008 and 92,400 per year in FY 2009 through FY 2011 (rounded to nearest 100).
15. Assume the DNRC would charge \$10 per notice filed for all notice types.
16. The DNRC would generate and deposit into the mineral interest revenue account approximately \$462,000 in FY 2008 and \$924,000 per year in FY 2009 through FY 2011. (total notices in assumption 14. X \$10 per notice)

**Personal Services:**

17. Approximately 350 notices and payments receipted per day. (92,400 / 260 days) Assume one cashier can process  $\pm$  200 payments per day will require 1.50 FTE with one FTE equivalent utilized in FY 2008. Entry salary for a pay band 3 accounting technician is \$19,881. Total cost is \$30,881 per FTE assuming \$11,000 average benefit expense. (FY 2008: \$30,881 X 1.00 = \$30,881; FY 2009: \$30,881 X 1.50 = \$46,322)
18. Estimate 3.00 FTE (1.50 FTE equivalent in FY 2008) required to scan  $\pm$  350 registration packets per day. Entry salary for a pay band 2 accounting clerk is \$16,567. Total cost is \$27,567 per FTE assuming \$11,000 average benefit expense. (FY 2008: \$27,567 X 1.50 = \$41,350; FY 2009: \$27,567 X 3.00 = \$82,701)
19. Estimate 0.50 FTE computer programmer required to implement and manage registry database and web portal application. Entry salary for a pay band 6 programmer is \$40,157. Total cost per FTE is \$51,157 assuming \$11,000 average benefit expense. (FY 2008 and FY 2009: \$51,157 X 0.5 = \$25,578)

20. Estimate average of 20 minutes per notice required to review, process, file, and input into registry. One FTE could therefore process 3 notices per hour. This workload would utilize 16.0 FTE (8.0 FTE equivalent in FY 2008). (350 notices per day = approximately 50 per hour divided by 3 per hour per FTE) Entry salary for a pay band 4 accounting technician is \$23,857. Total cost is \$34,857 per FTE assuming \$11,000 average benefit expense. (FY 2008:  $\$34,857 \times 8.0 = \$278,856$ ; FY 2009:  $\$34,857 \times 16.0 = \$557,712$ )
21. Estimate 2 FTE required for program management and supervision. Entry salary for a pay band 6 administrative services manager is \$44,950. Total cost is \$55,950 per FTE assuming \$11,000 average benefit cost. (FY 2008 and FY 2009:  $\$55,950 \times 2.0 = \$111,900$ )
22. Personal services costs total \$488,565 in FY 2008 and \$824,213 in FY 2009. Total personal services are escalated 2.5% per year in FY 2010 and FY 2011.

### **Operating Expenses**

23. Operating expenses escalated by 2.5% in FY 2010 and FY 2011.
24. One time office setup expenses of \$31,625. (23 positions X \$1,375 per FTE)
25. One time computer purchases of \$28,000. (20 positions X \$1,400 per computer)
26. Three scanner workstations required totaling \$15,000 (3 X \$5,000 per workstation)
27. One time database/website design expense of \$20,000. (DNRC IT staff estimate)
28. Two office printers required at \$2,500 apiece, one purchased in FY 2008 and FY 2009.
29. General office costs are \$2,160 per FTE per year for network charge, phone, and miscellaneous supplies. [ $(\$95 + \$35 + \$50) \times 12 = \$2,160$ ] Total general office costs are then \$28,080, \$49,680, \$50,922, and \$52,195 for FY 2008 through FY 2011, respectively.
30. Notice information will be scanned and sent to storage. Assume notices received as estimated in assumption 14 above, 25 files per storage box, 1 cubic-foot per box, and \$0.30/cubic-foot/month (current state rate). Storage costs for FY 2008 through FY 2011 are \$6,653, \$19,958, \$34,096, and \$48,927, respectively. Example calculation for FY 2009:  $[(46,200 + 92,400 \text{ files}) / 25 \times \$0.30 \times 12 = \$19,958]$
31. Advertising costs of \$2,772, \$2,772, and \$2,841 for FY 2008 through FY 2010, per section 14 of SB 26. (Estimate from FN for SB 261 in 2003 Legislature = \$2,369. Escalated 4% per year for four years =  $\$2,369 \times 1.17 = \$2,772$ .)
32. Estimate Department of Administration, Information Technology Services Department database/website hosting, storage, backup and disaster recovery service costs of \$1,332, \$3,495, \$5,158, and \$6,821 for FY 2008 through FY 2011, respectively.
33. Office space requirement of 200 gross square feet per FTE. Annual rental rate of \$15.00 per sqft. Rental costs total \$39,000, \$69,000, \$70,725 and \$72,493 for FY 2008 through FY 2011, respectively. (Example calculation for FY 2008:  $13.0 \text{ FTE} \times 200 \times 15.00 = \$39,000$ )
34. Operating expenses therefore total \$174,962, \$147,405, \$163,742, and \$180,437 for FY 2008 through FY 2011, respectively.

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b>DNRC -</b>				
<b>FTE</b>	13.00	23.00	23.00	23.00
<b><u>Expenditures:</u></b>				
Personal Services	\$488,565	\$824,213	\$844,818	\$865,939
Operating Expenses	\$174,962	\$147,405	\$163,742	\$180,437
<b>TOTAL Expenditures</b>	<u>\$663,527</u>	<u>\$971,618</u>	<u>\$1,008,560</u>	<u>\$1,046,376</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$201,527	\$47,618	\$84,560	\$122,376
State Special Revenue (02)	\$462,000	\$924,000	\$924,000	\$924,000
<b>TOTAL Funding of Exp.</b>	<u>\$663,527</u>	<u>\$971,618</u>	<u>\$1,008,560</u>	<u>\$1,046,376</u>
<b><u>Revenues:</u></b>				
State Special Revenue (02)	\$462,000	\$924,000	\$924,000	\$924,000
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$201,527)	(\$47,618)	(\$84,560)	(\$122,376)
State Special Revenue (02)	\$0	\$0	\$0	\$0

**Effect on County or Other Local Revenues or Expenditures:**

1. SB 26 does not expressly require the notice of registration, late notice of intent to preserve mineral interest, or mineral ownership updates to be recorded with the county clerk and recorder. However, county records are recognized as providing legal notice of ownership to the public. Mineral interest owners may be expected to record some (perhaps significant) portion of notices with the county clerk and recorder. SB 26 does require a mineral interest disclosure to be included as part of the realty transfer certificate, which is filed of record with the county. (See technical note #7.)

**Long-Range Impacts:**

1. The number of notice of mineral interests filed by fee mineral owners is expected to be greatest within the first four years of the program, and decline thereafter. The number of notices filed by mineral interests other than fee mineral ownership is expected to remain steady, as leases generally have a primary term of around five years. Mineral leases are also commonly assigned to new owners. The net effect of these factors on long-range filings and revenue is unknown.

**Technical Notes:**

1. This fiscal note estimates the number of eligible mineral ownership and lease working interests, transfers of mineral ownership and assignments of lease working interests, for the purpose of estimating the number of filings and fees generated. Section 3.(4) of SB 26 also includes other lesser interests, such as royalty, production payment, executive right, nonelective right, or lien interests. No attempt has been made to estimate the number of such interests which may be filed with the DNRC.
2. Section 2(2) limits the purpose of SB 26 to provide a means for termination of dormant mineral interests that impair marketability of real property. If impairment of marketability of the surface property is intended to be a condition of eligibility for termination of dormant mineral interests, then criteria defining

the market impairment standard should be provided. If not, reference to eligible dormant mineral interests may be clarified by deleting market impairment as a factor.

3. Section 4(1)(b) provides that mineral interests held by federal, tribal, state, agency or political subdivisions are exempt, except to the extent provided by state law other than SB 26. The DNRC is unable to determine which other statutes are intended to nullify the exemption. The DNRC concurs that state mineral interests be excluded, and suggests the conditional narrative in Section 4(1)(b) be amended to reference specific applicable statutes, or deleted.
4. Section 6(1) requires an owner of a mineral interest to file a notice of mineral interest or intent to preserve a mineral interest. However, Section 6(2) allows a third party to file notice for an owner whose identity cannot be established or is uncertain at time of execution of the notice. These two provisions appear to be in conflict with one another.
5. Section 10 may incorrectly describe the realty transfers that trigger the notice requirement to the DNRC. Section 10(2) requires a transferor of a mineral interest to file a mineral interest ownership update form evidencing a transfer of real property. Section 10(3) also identifies the filing requirement as applying to a realty transfer with a transfer of mineral interests. As drafted, a property transfer that includes the mineral estate would trigger the filing requirement, even though it would not create a split-estate because the minerals are going with the surface. Conversely, a property transfer where the surface owner is not transferring the minerals but is instead retaining them for himself, will create a split-mineral estate, but would not trigger a requirement to file a notice with the DNRC.
6. Section 12 provides that the filing fees be used to help pay the expenses incurred by the DNRC for administering and enforcing the provisions of SB 26. The provisions of SB 26 includes criteria for determining whether a mineral interest is considered “dormant;” a requirement that all owners of mineral interests shall file their notices by October 1, 2009; elements that the notice must contain; a requirement that legal descriptions of land and mineral interests must be “adequate;” and a civil penalty for failure to record a notice. The DNRC presumes the intent of the legislation does not include exposing the State of Montana to legal liability regarding the adequacy, accuracy, completeness, or truthfulness of notices filed and placed in the mineral registry. A dormant mineral interest that subsequently becomes productive can be worth millions of dollars. If the provisions of SB 26 can be interpreted in any way as grafting any liability on the state for errors or omissions in the data provided in the mineral registry, the financial impact to the state could be significant. The DNRC recommends deleting “enforcing” from Section 12, or the addition of clarifying language to ensure the state’s responsibility and liability is limited to “administering” the mineral registry created by SB 26. The fiscal note does not include staff or expertise to determine if the notices filed provide a legally “adequate” description of the interest and land pursuant to Section 6, and therefore could neither enforce “adequacy” nor defend the state against a suit for damages based on allegations that the notice information was not correct and therefore not “adequate.” If the state is intended to be legally responsible for the quality and accuracy of notices filed, a mineral title review conducted by or under the authority of a mineral attorney will be required for each notice filed. These reviews include examination of the full chain of title back to base patent, and generally cost from a few to several thousand dollars per examination.
7. SB 26 establishes a process whereby certain property interest information will be located with both the state and the county. A notice of registration, notice of intent, or mineral interest update filed of record with the county would not comply with SB 26, and therefore may be inadequate to preserve a dormant mineral interest.

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*Sponsor’s Initials*

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*Date*

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*Budget Director’s Initials*

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